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| IN THE MATTER OF | : | BEFORE THE |
| WESLEY & REBECCA JENSON | : | |
| t/a ARROWWOOD SHEPHERDS, INC. | : | HOWARD COUNTY |
| Petitioners | : | BOARD OF APPEALS |
| | : | Case No. BA 05-033C |

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DECISION AND ORDER

On October 24, 2006, the Howard County Board of Appeals ("Board") met to consider the petition of Wesley and Rebecca Jenson, t/a Arrowwood Shepherds, Inc., Petitioners, for a conditional use for a dog kennel and pet grooming establishment in an RC-DEO (Rural Conservation – Density Exchange Option) Zoning District, filed pursuant to Section 131.N.30 of the Howard County Zoning Regulations.

All members of the Board were present at the hearing and Chairperson Robert Sharps presided. Barry M. Sanders, Assistant County Solicitor, served as legal advisor to the Board.

The Petitioners were represented by E. Alexander Adams, Esquire. Rebecca Jenson, Wesley Jenson, Stacy Glaze Moore, Edward J. Hoey, Tina Burke, Maureen Brennan-Petitt, and Nancy Brown testified in favor of the Petition. Mark Schaeffer, Raymond Becraft Jr., Bonny Kissinger, Robert Johnson, and David Owens testified in opposition to the petition.

Because this matter is before the Board of Appeals pursuant to its original jurisdiction, the hearing was conducted in accordance with Section 2.209 of the Howard County Code. The notice of the hearing had been advertised and the property posted, according to regulations. The Board members indicated that they had viewed the property as required by the Zoning Regulations.

Prior to the introduction of testimony, the following items were incorporated into the record by reference: the appropriate provisions of the Howard County Charter; the appropriate provisions

of the Howard County Code; the Howard County Zoning Regulations, the recommendation of approval of the Department of Planning and Zoning dated March 13, 2006, the General Plan for Howard County; the General Plan of Highways; and the Petition and Plat submitted by the Petitioner.

FINDINGS OF FACT

Based on the evidence presented at the hearing, the Board of Appeals makes the following Findings of Fact:

1. The Petitioners, Wesley and Rebecca Jenson, are the owners of the subject property, known as 3101 Florence Road, which is located in the 4th Election district on the northeast side of Florence Road about 200 feet south of Jennings Chapel Road in Woodbine (the "Property"). The Property is referenced on Tax Map 13, Block 9 as Parcels 137.

2. The Property is a trapezium-shaped parcel consisting of about 5.13 acres. The Property has about 500 feet of frontage on Florence Road, but narrows to the rear where it is about 269 feet wide. The Property is about 515 feet deep along its west side and 673 feet deep along its east side lot line.

The Property is improved with a two-story, single-family dwelling located in the southeast portion of the lot about 175 feet from Florence Road and about 80 feet from the east side lot line. A 6' tall fence encloses a small area behind the house. About 90 feet to the southeast of the house is a detached two-bay garage situated about 50 feet from Florence Road. A gravel driveway beginning along the center of the Florence Road frontage runs southeast to the house and garage.

The area around the buildings is predominantly open lawn. A buffer of vegetation is located along the road frontage. The west and north portions of the Property are wooded. The Property is moderately sloped, with the highest area being in the southeast, and then sloping down generally to

the north and west, with the lowest areas at the rear lot line and a more than 20 foot drop in elevation.

3. All vicinal properties are similarly zoned RC-DEO. To the west and north of the Property is Parcel 22, which is a farm governed by an agricultural land preservation easement. To the east is Parcel 33, a 90.87 acre farm parcel also covered by an agricultural land preservation easement. A one-story, single-family detached dwelling fronting Florence Road is located in the southern portion of Parcel 33 about 400 feet from the Property line. Across Florence Road to the south are Parcel 23 and Lot 1 of Parcel 333, each of which is improved with a two-story, single-family detached dwelling.

4. Florence Road is a major collector roadway with two travel lanes and 20 feet of paving within an existing variable width and a proposed 60-foot wide right-of-way. The speed limit in the area of the Property is 30 mph. The DPZ technical staff report indicates that the visibility from the proposed entrance road is over 550 feet in each direction. The 2000 General Plan designates the Property as a "Rural Conservation" land use. The Property will be served by private water and septic facilities.

5. The Petitioners seek a conditional use to establish on the Property a dog-training and boarding facility for up to 10 dogs. The facility would be operated from a kennel building to be located at the rear of the Property about 100 feet from the rear lot line and about 400 feet from the front line. The building will consist of a one-story structure approximately 80 feet wide and 25 feet deep with 10 indoor/outdoor kennel runs on the north side of the building. The building will contain the runs, a dog bathing area, an indoor training area, an office, kitchen, laundry room and bathroom. The building will be surrounded by a 6' wood privacy fence that will extend from the front of the building to within about 10 feet of the rear lot line. This fenced area will be used as an outdoor dog

training and exercise area.

The facility will be accessed from a paved driveway beginning at a point to the west of the existing driveway and running north to a paved parking area for twelve vehicles to be located in front of the building. A split-rail perimeter fence will enclose the rear half of the Property and will be gated at the driveway. The Petitioners propose to maintain the existing trees along the perimeter of the Property and between the house and the facility.

6. The facility will be in operation from 7:00 a.m. to 8:00 p.m., seven days a week. The only employees will be the Petitioners. The facility will be used primarily for dog training and will board up to 10 dogs. The dogs will not be permitted outdoors before 9:00 a.m. or after sundown. The petition states that the Petitioners may also consider operating a "doggy day care" during the week within the facility with some supervised outdoor activities. Motion detection security lighting will be installed on the building.

7. Rebecca Jenson submitted Petitioner's Exhibit #1 - Property Boundary Assessment performed by M&N Engineering and Diving Services, Inc. In her testimony Mrs. Jenson testified to the conditional use proposal. She stated that the training of dogs will take place behind the proposed 80' by 25' building and that the facility will board up to 10 dogs. Each dog run will be 4' by 12' in dimension. Mrs. Jenson stated that she owns seven dogs as pets which are kept within the house and fenced area behind her house.

8. Wesley Jenson testified that the proposed masonry building will be insulated and soundproofed. Mr. Jenson testified that he trains dogs professionally.

9. Mark Schaffer, a neighbor across the street, testified that he is concerned for the safety of his family and that the intersection of Florence Road and Jennings Chapel Road is a dangerous intersection. David Owens, a neighbor who resides across the street, testified that his

main concern is the noise and reduced property values that will be generated by the Petitioner's proposal.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Board makes the following Conclusions of Law.

I. General Criteria for Conditional Uses (Section 131.B).

A. The Howard County General Plan designates the area in which the Property is located as "Rural Conservation" land use. The proposed kennel for 10 dogs is of relatively low intensity. The kennel will be located toward the rear of the 5.13-acre Property. The conditional use will have access to Florence Road which is a major collector. Accordingly, the nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the Property are such that the use will be in harmony with the land uses and policies indicated in the General Plan for the district in which it is located, in accordance with Section 131.B.1.a.

B. Section 131.B.2 of the Zoning Regulations requires the Board to determine whether the proposed use at the Property will have adverse effects on vicinal properties above and beyond those ordinarily associated with such uses.

Virtually every activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before the Board is not whether a kennel has adverse effects. The proper question is whether those adverse effects are greater at the proposed site than they would be elsewhere within other RC Districts of the County. While the Protestants' concerns about traffic safety and a kennel use

generating noise in their neighborhood are understandable, no evidence was placed before the Board demonstrating any adverse effects above and beyond those ordinarily associated with the proposed use in the RC District.

The Board concludes for the reasons stated below, that the Petitioners have met their burden in presenting sufficient evidence establishing that this proposed use meets the requirements of the Zoning Regulations.

1. The Petitioners' proposed dog kennel will consist of typical activities associated with a dog kennel. The proposed use will be of relatively low intensity since it will be limited to 10 dogs at any one time. The dogs will be kept indoors most of the time and will be allowed outdoors only between 9:00 a.m. and sundown. The dog runs and outdoor training area are behind the facility which is located at the rear of the Property and more than 400 feet from the road. The proposed masonry building will be soundproofed to reduce noise. Furthermore, the noise will be further buffered by distance and existing trees. Waste material will be disposed of on site. A motion- detection security lighting will be installed on the building. The proposed driveway and parking areas will be paved. The Board concludes that the use will not generate excessive noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions beyond those inherently associated with a dog kennel in the RC zoning district as required by Section 131.B.2.a.

2. The proposed 80' by 25' masonry building will be located at the rear of the Property and well separated and buffered from the road and vicinal residential properties. The building and dog runs will be well screened from the adjoining properties by the proposed 6' privacy fence. Accordingly, the location, nature and height of structures, walls and fences, and the nature and extent of landscaping on the site are such that the use will not hinder or discourage the use or development of the adjacent land and structures more at the subject site than it would generally

elsewhere in the zone, in compliance with Section 131.B.2.b of the Zoning Regulations.

3. The Petitioners will provide twelve parking spaces in the parking area at the rear of the proposed building. The parking area and drive are located toward the rear of the site and will be adequately screened from Florence Road and vicinal residential properties by distance, fencing and landscaping. Consequently, parking areas are of adequate size and parking areas and driveways are properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties as required by Section 131.B.2.c.

4. The access drive from Florence Road is properly located and has adequate sight distance in both directions. The proposed conditional use will receive few visitors at any one time, thus acceleration or deceleration lanes are not necessary. Consequently, the ingress and egress drive will provide safe access with adequate sight distance and with adequate acceleration and deceleration lanes where appropriate, as required by Section 131.B.2.d.

II. Specific Criteria for Kennels and Pet Grooming Establishments (Section 131.N.30).

A. Section 131.N.30.a. is not applicable because no more than 10 dogs will be on site at any one time.

B. The Property is 5.13 acres in area and exceeds the minimum lot size of 3 acres, in compliance with Section 131.N.30.b.(1). The outside pens are 100 feet from the north lot line and more than 100 feet from all other lot lines and meet the 100-foot minimum required under Section 131.N.30.b.(2). The building is 400 feet from Florence Road and exceeds the minimum of 75 feet required by Section 131.N.30.b.(3)(a). The building is 100 feet from the north lot line and more than 30 feet from the side lot lines and therefore meet the minimum 30-foot setbacks as required by Section 131.N.30.b.(3)(b).

C. Section 131.N.30.c. is not applicable to this petition.

D. The proposed parking areas and outside pens and runs, and all buildings will be adequately screened by landscaping, fencing and separated by ample space from adjoining properties and public street rights-of-way, as required by Section 131.N.30.d.

E. Waste will be disposed of on site. Given the distance from lot lines to the building, the Board finds that the disposal of wastes will be such that odors or other emissions will not be perceptible at lot lines, in compliance with Section 131.N.30.e.

F. The Property has frontage on Florence Road, a major collector, in compliance with Section 131.N.30.f.

ORDER

Based upon the foregoing, it is this 17th day of January, 2007, by the Howard County Board of Appeals, ORDERED:

That the petition of Wesley and Rebecca Jenson, t/a Arrowwood Shepherds, Inc., Petitioners, for a conditional use for a dog kennel and pet grooming establishment in an RC-DEO (Rural Conservation – Density Exchange Option) Zoning District is hereby **GRANTED**, subject to the following conditions:

1. The conditional use shall apply only to the uses and structures as described in the petition and conditional use plan submitted, as amended, to the Board as Applicants' Exhibit #1, and not to any other activities, uses, or structures on the Property.

2. That no more than ten (10) dogs (other than the Petitioners' pets) will be housed and/or boarded in the kennels at any one time.

3. Neither the garage nor the rear yard of the house may be used for activities under this conditional use.

4. All training of dogs shall take place between the hours of 9 a.m. and 8 p.m. daily.
5. The hours of operation of the kennel use shall be limited to 7 a.m. thorough 8 p.m. daily.
6. The Petitioner shall comply with all applicable Federal, State, and County laws and regulations.

ATTEST:

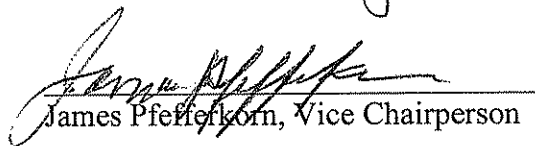


Ann Nicholson, Secretary

HOWARD COUNTY BOARD OF APPEALS



Robert Sharps, Chairperson



James Pfefferkorn, Vice Chairperson

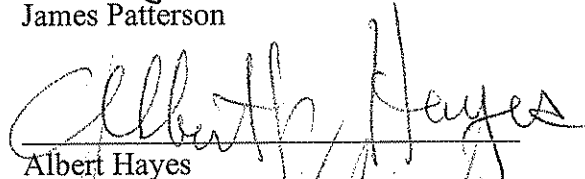
PREPARED BY:

HOWARD COUNTY OFFICE OF LAW
BARBARA M. COOK
COUNTY SOLICITOR

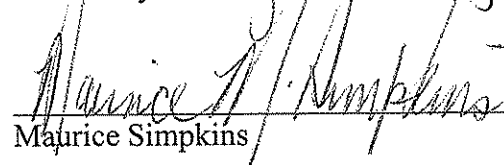


Barry M. Sanders
Assistant County Solicitor

no longer Bd member
James Patterson



Albert Hayes



Maurice Simpkins

